

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

DIRECT LINE: (202) 342-8544

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
AUSTIN, TX
CHICAGO, IL
PARSIPPANY, NJ
STAMFORD, CT
BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

March 16, 2017

By ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Red Pocket, Inc. Petition for Designation as a Lifeline Broadband
Provider; WC Docket Nos. 09-197, 11-42**

Dear Ms. Dortch:

Red Pocket, Inc. (Red Pocket or the Company) by and through the undersigned counsel, hereby submits this letter regarding its pending Petition for Streamlined Designation as a Lifeline Broadband Provider (LBP) Eligible Telecommunications Carrier (ETC) (Petition).¹ Specifically, this letter is intended to:

1. Request that the Wireline Competition Bureau (Bureau) delineate a path forward for Red Pocket to offer Lifeline broadband services by treating Red Pocket's Petition as a request for designation as a wireless Lifeline-only ETC² and request for Compliance Plan approval,³ and granting the petition no later than April 21, 2017 (the deadline for

¹ See Red Pocket, Inc. Petition for Streamlined Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197 (Oct. 21, 2016).

² Alternatively, Red Pocket requests LBP designation by the Bureau, including a designation that is limited to the two federal ETC jurisdictions identified in the Petition and which confers upon Red Pocket approved Compliance Plan status, no later than April 21, 2017. Red Pocket is prepared to move forward with Lifeline broadband offerings as set forth in the Petition, including bundled broadband service offerings that include voice.

³ As explained below, confirmation by the Bureau that approval of the Petition also serves as approval of a Red Pocket Compliance Plan is consistent with the Lifeline Modernization Order and will allow Red Pocket to spur competition in the national market for Lifeline services by seeking additional ETC designations from individual state regulatory commissions.

Marlene Dortch
March 16, 2017
Page Two

the Bureau to act on Red Pocket's LBP Petition pursuant to the procedures set forth in the Lifeline Modernization Order⁴);

2. Limit the Petition to request ETC designation in the states of Florida and New York. Red Pocket also removes from its request areas within these states that fall exclusively within federally recognized Tribal lands; and
3. Clarify the proposed Lifeline service plans for which Red Pocket seeks approval from the Commission.

Red Pocket submits that these actions are consistent with the Federal Communications Commission's (Commission's) rules and orders for the Lifeline program, and therefore respectfully requests that the Bureau should grant Red Pocket's Petition, as modified by this letter, at least for the two federal ETC jurisdictions identified above, as soon as possible, but no later than April 3, 2017.

Company Background

Red Pocket is an established provider of prepaid voice telecommunications, text messaging, and broadband Internet access services, and is poised to be a unique provider of Lifeline broadband services. Red Pocket is the only LBP applicant with wholesale relationships that enable the Company to offer service on each of the country's four major wireless network providers. This unique service offering will allow Red Pocket's Lifeline subscribers to bring virtually any new or used mobile device (BYOD) that works in the United States, with very limited exceptions.⁵ Much like wireless consumers in other countries around the world, with Red Pocket, consumers in the United States can choose the underlying network that works best for them in terms of local coverage where they live or work as well as for a device that they may already own without needing to rely on their service provider to supply a device. With an estimated \$33.8 billion worth of cell phones now sitting idle in boxes around the country or heading to landfills,⁶ the ability to reuse a device with Red Pocket regardless of network

⁴ See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶ 281 (rel. Apr. 27, 2016) (Lifeline Modernization Order) (establishing that "the Bureau shall act on [LBP petitions that do not meet the criteria for streamlined processing] within six months of the submission of a completed filing").

⁵ Exceptions may include devices that are under contract with a carrier or have been reported lost or stolen.

⁶ See Megan Durisin, "Americans Are Sitting on \$33 Billion Worth of Old Cell Phones," Business Insider (Feb. 19, 2013), <http://www.businessinsider.com/get-hundreds-for-your-old-phones-2013-2>.

KELLEY DRYE & WARREN LLP

Marlene Dortch
March 16, 2017
Page Three

affiliation has meaningful environmental and economic benefits in addition to being pro-consumer choice.

Universal BYOD will be a compelling and unique aspect of Red Pocket's Lifeline program, but Red Pocket will also fully support consumers wishing to acquire a new or refurbished device from the Company with a robust offering of 3G or 4G-capable devices.

Red Pocket also possesses unique and strategic distribution relationships that will allow it to reach segments of the U.S. population that may heretofore have been unexposed to the Lifeline program. For example, Red Pocket is the *only* wireless operator in an active strategic partnership with eBay. The Company plans to offer its Lifeline subsidy on all of its broadband minimum service standard compliant plans, which eBay helps to promote in the context of this strategic relationship. Via eBay, Red Pocket gains broad exposure to a unique demographic that includes those otherwise unaware of the Lifeline program and/or unable to travel to a physical store or event to obtain wireless service.

Further, Red Pocket has established partnerships with the Office of the Bronx Borough President in New York City, and the office of the Mayor of Miami, Florida, to participate in local events in elderly and affordable housing communities to promote awareness of and enrollment in Lifeline by eligible consumers. Through unique partnerships such as these, Red Pocket can help bring Lifeline services to eligible subscribers who may not presently be aware of the program and their eligibility for it.

Red Pocket's service offerings uniquely address some of the critical social and cultural barriers to broadband participation across the United States, particularly among segments of the U.S. population long underserved by traditional mainstream operators.

Red Pocket is the only wireless operator in the United States to offer live customer service in Chinese (Mandarin and Cantonese) and Filipino (Tagalog and Ilokano), along with Spanish and English. Further, Red Pocket intends to include free international calling with all of its LBP plans. Calls to China, India, Mexico, Canada, and other select destinations will be rated the same as a domestic call included in any plan offered in conjunction with Red Pocket's Lifeline service. The Company's commitment to digital inclusion is longstanding. For example, Red Pocket was the first U.S. mobile operator to offer mobile handsets with Chinese menus and texting capabilities.

Thanks in part to these unique advantages offered to consumers, hundreds of thousands of non-Lifeline subscribers have already turned to Red Pocket for mobile service over the course of the Company's ten year history.

Marlene Dortch
March 16, 2017
Page Four

Treatment of the Petition as a Request for ETC Designation and Compliance Plan Approval

In reliance on the streamlined LBP designation process adopted in the Lifeline Modernization Order, the Red Pocket invested significant resources to facilitate a rapid and smooth rollout of its Lifeline broadband services upon approval of its Petition. As such, the Company was discouraged by the decision by the Bureau to remove its Petition from streamlined processing. Nevertheless, Red Pocket intends to move forward with its plans to offer Lifeline services, and therefore is requesting that the Bureau treat its Petition as a request for limited designation as a Lifeline-only wireless ETC.⁷

Red Pocket also respectfully requests that the Bureau confirm that approval of the Petition will also serve as approval of a Red Pocket Compliance Plan.⁸ With approved Compliance Plan status, Red Pocket can then seek to expand its innovative Lifeline service offerings to additional states by applying for similar wireless Lifeline-only ETC designations on a state-by-state basis in accordance with the requirements set forth by each state.

As stated in the Petition, Red Pocket commits to complying with the Lifeline Modernization Order and all other requirements set forth in the Lifeline rules. Additionally, in the future, Red Pocket will implement any subsequent rule changes as of their effective date.

Limitation of the Petition to Two Federal ETC States

At this time, in order to begin the process of providing service to low-income consumers across the country, Red Pocket needs the Bureau to expeditiously approve its Petition in the states of Florida and New York.⁹ Both of these jurisdictions has provided an affirmative statement to the Commission that it does not assert authority over wireless resellers for the purpose of Lifeline-only ETC designation. Copies of the statements from of these states are attached as **Exhibit A**. To assuage any potential concerns about infringing on Tribal sovereignty, Red Pocket hereby modifies its Petition to exclude all federally recognized Tribal

⁷ Alternatively, as stated above, Red Pocket requests LBP designation by the Bureau, including a designation that is limited to the two federal ETC jurisdictions identified in the Petition and which confers upon Red Pocket approved Compliance Plan status, no later than April 21, 2017.

⁸ Red Pocket respectfully submits that its Petition, because originally filed as an LBP request, satisfies the “designation criteria [which the Commission deemed] sufficient to prevent waste, fraud, and abuse in the program, so a separate obligation to obtain approval for a compliance plan is not necessary.” Lifeline Modernization Order, ¶ 281, n.739.

⁹ Red Pocket provided as an attachment to the Petition a list of zip codes in each of these states which it can serve pursuant to its agreements with its underlying service providers.

Marlene Dortch
March 16, 2017
Page Five

lands within these two states.¹⁰ Therefore, it cannot be argued that a copy of Red Pocket's Petition must be provided to any Tribal authorities pursuant to section 54.202(c) of the Commission's rules.

Red Pocket's Proposed Lifeline Service Plans

Red Pocket's Petition included multiple proposed Lifeline service plans. To clarify, through this submission, the Company is requesting approval for the plan in its Petition which would provide Lifeline subscribers with 500 MB of 3G or 4G data and 500 voice minutes or SMS messages (including international calling to 72 destinations) for \$5.00 per month from the consumer. Red Pocket may in the future make additional plans available to Lifeline-eligible subscribers in specific states and may choose to change its plans as long as the plans continue to meet the minimum service standards for voice and/or broadband service.¹¹ To be clear, however, Red Pocket intends to include a voice component in all of its Lifeline plans. Thus, Red Pocket is not seeking forbearance from the Commission's requirement to provide all supported services, including voice services.¹²

To maximize choice, subscribers also will have the option of purchasing additional units of broadband service for as little as \$10.00. These supplemental top-up data packages will be available for purchase at Red Pocket's website or in retail stores like CVS. The availability of top-up data in affordable increments will give subscribers the flexibility to tailor their broadband services to meet changing needs. Subscribers can further customize their service by purchasing Wi-Fi and hotspot capable mobile devices from Red Pocket, starting at \$30.00.

* * *

¹⁰ To the extent that any of the zip codes included in this list fall partially in a federally recognized Tribal land, Red Pocket will not serve the area within those federally recognized Tribal lands.

¹¹ See Lifeline Modernization Order ¶ 93; 47 C.F.R. §§ 54.408(a)(2), (b)(2)(ii), (c).

¹² Lifeline Modernization Order ¶ 296.

KELLEY DRYE & WARREN LLP

Marlene Dortch
March 16, 2017
Page Six

For all of the above-stated reasons, Red Pocket respectfully requests that the Bureau grant its Petition, at least for the two federal ETC jurisdictions identified above, as soon as possible, but no later than April 21, 2017.

Respectfully submitted,



John J. Heitmann
Jennifer R. Wainwright
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
(202) 342-8400
jheitmann@kelleydrye.com

Counsel to Red Pocket, Inc.

EXHIBIT A

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

October 24, 2011

Ms. Kasey C. Chow
Lance J.M. Steinhart, P.C.
Attorney At Law
1725 Windward Concourse
Suite 150
Alpharetta, GA 30005


Re: Undocketed – Q Link Wireless LLC's ETC Designation

Dear Ms. Chow:

We received your October 18, 2011 letter advising that Q Link Wireless LLC, a commercial mobile radio service provider, wish to seek designation as an ETC in Florida. You also requested an affirmative statement that the Florida Public Service Commission no longer assert jurisdiction to designate commercial mobile radio service providers as eligible telecommunication carriers in Florida.

This letter acknowledges that the revisions to Chapter 364, Florida Statutes, changed the Commission's jurisdiction regarding telecommunications companies. I direct your attention to Chapter 364, Florida Statutes, for the proposition that the Federal Communications Commission, rather than this Commission is the appropriate agency to consider Q Link Wireless LLC's bid for ETC status.

Sincerely,


S. Curtis Kiser
General Counsel

cc: Beth W. Salak, Director, Division of Regulatory Analysis
Robert J. Casey, Public Utilities Supervisor, Division of Regulatory Analysis
Adam J. Teitzman, Attorney Supervisor, Office of the General Counsel
Ann Cole, Commission Clerk, Office of Commission Clerk

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

www.dps.state.ny.us

PUBLIC SERVICE COMMISSION

GARRY A. BROWN

Chairman

PATRICIA L. ACAMPORA

MAURKEEN F. HARRIS

ROBERT E. CURRY JR.

JAMES L. LAROCCA

Commissioners



PETER MCGOWAN

General Counsel

JACLYN A. BRILLING

Secretary

July 28, 2010

TO WHOM IT MAY CONCERN:

Re: i-wireless CMRS Jurisdiction

We have received a letter from i-wireless, LLC (i-wireless), requesting a statement that the New York State Public Service Commission does not exercise jurisdiction over CMRS providers for the purpose of making determinations regarding Eligible Telecommunications Carrier designations under section 214 (e)(6) of 47 U.S.C. In response to this request, please be advised that section 5 (6)(a) of the New York State Public Service Law provides that:

Application of the provisions of this chapter to cellular telephone services is suspended unless the commission, no sooner than one year after the effective date of this subdivision, makes a determination, after notice and hearing, that suspension of the application of provisions of this chapter shall cease to the extent found necessary to protect the public interest.

The New York State Public Service Commission has not made a determination as of this date that regulation should be reinstituted under section 5 (6)(a) of the Public Service Law. Consequently, based on the representation by i-wireless that it is a mobile virtual network operator reselling wireless services, i-wireless would not be subject to New York State Public Service Commission jurisdiction for the purpose of making an Eligible Telecommunications Carrier designation.

Very truly yours,

Maurkeen J. McCauley
Maurkeen J. McCauley
Assistant Counsel

M. McCauley